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December 12, 2003

Mr. Tom Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602-0615

VIA FEDERAL EXPRESS

DEC 12 2003

Post Office
Frankfort, KY

Re: KY PSC Docket Number: 2003-00023 - Complaint of AT&T
Broadband Phone of Kentucky, LLC. against ALLTEL Kentucky,
Inc. and Kentucky ALLTEL, Inc.

Dear Mr. Dorman:

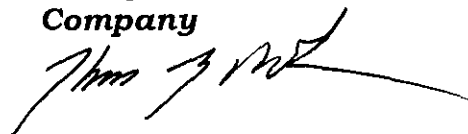
Enclosed for filing with the Public Service Commission are the original and fifteen (15) copies, as well as a CD, of AT&T Broadband Phone of Kentucky, LLC's Brief in the above referenced docket.

Please stamp two (2) extra copies of the Brief and return in the federal express envelope provided.

Thank you for your assistance.

Best regards,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability
Company



Thomas B. McGurk, Esq.

Enclosures

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

AT&T Broadband Phone of
Kentucky, LLC,
Complainant

vs.

ALLTEL Kentucky, Inc., and
Kentucky ALLTEL, Inc.
Defendants.

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Case No. 2003-00023

FILED 1 1 2003

BRIEF OF AT&T BROADBAND PHONE OF KENTUCKY, LLC

Despite the efforts of ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc. (collectively "ALLTEL")¹ to confuse the issues in this proceeding, AT&T Broadband Phone of Kentucky, LLC ("AT&T Broadband") seeks the following straight forward relief from the Kentucky Public Service Commission (the "Commission"): (1) enforcement of express and unequivocal provisions allowing "indirect interconnection" set forth in the interconnection agreement currently in effect between AT&T Broadband and ALLTEL in Shepherdsville ("Shepherdsville Interconnection Agreement"), and as required by Section 251(a) of the Telecommunications Act of 1996 ("Act")² and KRS 278.030(2); and (2) prohibiting ALLTEL from continuing to bill AT&T Broadband customers once their telephone numbers have been "ported" from ALLTEL to AT&T Broadband in both Shepherdsville and Lexington, as required by KRS 278.170 and KRS 278.030(2).

¹ ALLTEL Kentucky, Inc. is a defendant in this proceeding because it operates in Shepherdsville. Kentucky ALLTEL, Inc. is a defendant because it purchased (and now operates) exchanges from Verizon South, Incorporated in Lexington. *See, In the Matter of Petition of ALLTEL Corporation to Acquire the Kentucky Assets of Verizon South, Incorporated*; Kentucky Public Service Commission; Case No. 2001-00399; Order dated February 13, 2002.

² *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

BACKGROUND

A. AT&T Broadband's Local Service in Kentucky.

Previously, AT&T Broadband was a wholly owned indirect subsidiary of AT&T Corp., and one of the certificated companies through which AT&T Corp. offered local service in Kentucky. With respect to AT&T Broadband, AT&T Corp. provided local service in Kentucky through an arrangement with Insight Communications Company, Inc. ("Insight") using various Insight cable facilities. Through this arrangement, Insight provided the "last mile" or "local loop" to the customer using Insight's upgraded "telephony ready" cable facilities, while AT&T Corp. provided the "switching" functionality. In order to provide this switching functionality, AT&T Corp. installed a switch in Louisville.

AT&T Corp. relied upon other AT&T wholly owned companies, namely, AT&T Communications of the South Central States, LLC (formerly AT&T Communications of the South Central States, Inc.), and TCG of Ohio, Inc. to manage all interconnection issues with various local exchange carriers for AT&T Broadband. Accordingly, the interconnection agreements first used by AT&T Broadband to offer local service in Kentucky (including the Shepherdsville Interconnection Agreement) were between AT&T Communications of the South Central States, LLC (or its predecessor, AT&T Communications of the South Central States, Inc.) and TCG of Ohio, Inc. and the various local exchange carriers.

However, on November 18, 2002, by merger AT&T Corp. transferred all of its interest in AT&T Broadband (as well as the Louisville switch) to Comcast Corporation.³ As a result of this transfer, AT&T Communications of the South Central States, LLC and TCG

³ Direct Testimony of AT&T Broadband Witness Kenneth J. Rejba, filed May 7, 2003, at Pages 1, 5.

of Ohio, Inc. (which remained wholly owned companies of AT&T Corp.) no longer managed interconnection issues on behalf of AT&T Broadband with other local exchange carriers. Accordingly, beginning in late 2002, AT&T Broadband adopted in its entirety the Shepherdsville Interconnection Agreement with ALLTEL,⁴ as well as the interconnection agreement currently in effect between BellSouth Telecommunications, Inc. ("BellSouth") and TCG of Ohio, Inc. ("BellSouth Interconnection Agreement").⁵

B. The "Indirect Interconnection" Dispute.

This dispute involves the Shepherdsville Interconnection Agreement and interconnection of AT&T Broadband's Louisville switch with ALLTEL's three switches in Shepherdsville.⁶ ALLTEL's switches are connected to BellSouth's Louisville tandem switch, which also is connected to AT&T Broadband's Louisville switch.⁷ Because BellSouth's Louisville tandem switch "sits in the middle" between AT&T Broadband's Louisville switch and ALLTEL's Shepherdsville switches, calls originated by AT&T Broadband customers in Shepherdsville can be transported to ALLTEL customers in Shepherdsville and other markets in Kentucky through this BellSouth tandem switch, and visa versa.

⁴ On January 16, 2003, AT&T Broadband provided notice to ALLTEL of its intent to adopt the Shepherdsville Interconnection Agreement. On February 7, 2003, the Commission issued its Order approving such adoption and ordering ALLTEL to file such adopted interconnection agreement with the Commission. Such adoption agreement subsequently was executed by AT&T Broadband and ALLTEL and filed with the Commission on April 10, 2003. *See, AT&T Broadband Phone of Kentucky, LLC's Notice of Intent to Adopt Interconnection Agreement and Petition Requesting Commission Order, Authorization, or Permission for Approval of Adoption of Interconnection Agreement*; Kentucky Public Service Commission, Docket No. 2003-00022.

⁵ The effective date of AT&T Broadband's Interconnection Agreement with BellSouth was October 7, 2002.

⁶ The three (3) ALLTEL switches located in Shepherdsville generally are referred to as "Zoneton," "Shepherdsville," and "Mt. Washington."

⁷ ALLTEL's Zoneton switch acts as "psuedo" tandem in that ALLTEL's Shepherdsville and Mt. Washington switches are connected to its Zoneton switch, with the Zoneton switch then connected with BellSouth's Louisville tandem switch. Hearing Transcript at Page 138.

The use of BellSouth's or any other third-party provider's tandem switch to complete calls between two other carriers is referred to as "transit service" for which the third-party carrier receives payment.⁸ The third-party provider's transit service charge is paid by the carrier originating the calls for completion to the second carrier. The interconnection agreement between AT&T Broadband and BellSouth specifically provides that BellSouth will provide such transit service for AT&T Broadband.⁹ Additionally, BellSouth has confirmed that it will provide such transit service to both ALLTEL and AT&T Broadband (provided BellSouth is paid for providing this service).¹⁰

Accordingly, the "indirect interconnection" dispute in this proceeding concerns whether language in the Shepherdsville Interconnection Agreement allows AT&T Broadband to exchange local traffic with ALLTEL in Shepherdsville "indirectly" through the BellSouth tandem discussed above (with the originating party being responsible for paying BellSouth's transit fees), or whether AT&T Broadband must "directly interconnect" with ALLTEL by installing or leasing additional dedicated trunks between its Louisville switch and at least one

⁸ *See, generally, In the Matter of Brandenburg Telecom LLC v. Verizon, South, Inc.*, Kentucky Public Service Commission; Case No. 2002-00143; Orders dated May 23, 2002 and September 3, 2002.

⁹ Direct Testimony of AT&T Broadband Witness David J. Sered, Exhibit 4, filed May 7, 2003 and replaced with new Exhibit 4 at the Hearing; Hearing Transcript at Page 8.

¹⁰ KY PSC Intra-Agency Memorandum dated April 11, 2003 at Page 4; *See also*, Letter from Dorothy J. Chambers of BellSouth to KY PSC dated April 18, 2003. In Ms. Chambers' April 18, 2003 letter, she states: "... BellSouth is perfectly willing to transit traffic from ALLTEL and AT&T [Broadband], provided that each party enters into a transit agreement with BellSouth and compensates BellSouth for the transit function. AT&T [Broadband] currently has such an agreement with BellSouth. *We would note, however, that regardless of the interconnection point selected by AT&T [Broadband] and ALLTEL, if any, BellSouth will charge the originating carrier for the use of the BellSouth network in providing the transit function.*" *Emphasis Added.* Accordingly, AT&T Broadband has acknowledged its obligation and has agreed to pay BellSouth's transit service charge for AT&T Broadband originated traffic. ALLTEL, however, continues to refuse to acknowledge its obligation to pay BellSouth's transit service charge for ALLTEL originated traffic.

of ALLTEL's three Shepherdsville switches.¹¹ Because "indirect interconnection" facilities already are in place (while "direct interconnection" facilities are not¹²), the Commission's resolution of this dispute will have significant consequences as to when and how competition for local telephone service will take place in the Shepherdsville market.

Moreover, this dispute is made even more important under either form of interconnection in light of ALLTEL's requirement that AT&T Broadband be financially responsible for transporting all of ALLTEL originated traffic from ALLTEL's local exchange boundary (in Shepherdsville) to AT&T Broadband's Louisville switch.¹³ ALLTEL takes this position based on its misinterpretation of Sections 251(a) and 251(c) of the Act, as well as its erroneous assertion that ALLTEL's "network" ends at the edge of its local exchange boundary in Shepherdsville.¹⁴ ALLTEL makes this unreasonable financial demand of AT&T Broadband even though (1) ALLTEL has an existing meet-point fiber arrangement (which it jointly owns with BellSouth) which currently carries calls from ALLTEL's customers in Shepherdsville to BellSouth's tandem switch¹⁵ (thus begging the question of where ALLTEL's "network" really ends); and (2) such demand results in AT&T Broadband improperly paying for the transport of ALLTEL's originated calls under the Act.¹⁶

Given the significant expense associated with deploying "direct interconnection" (with no customers in Shepherdsville generating revenue to help cover these costs), AT&T

¹¹ In addition to ALLTEL's obligation to allow "indirect interconnection" under the express and unequivocal provisions of the Shepherdsville Interconnection Agreement, ALLTEL also is obligated to allow "indirect interconnection" under Section 251(a) of the Act and KRS 278.030(2). ALLTEL's statutory obligation to provide "indirect interconnection" under the Act and state law will be addressed later in this brief.

¹² Hearing Transcript at Pages 150-151.

¹³ Letter from Stephen B. Rowell of ALLTEL to AT&T Broadband's counsel (with copy to KY PSC) dated April 18, 2003.

¹⁴ *Id.*

¹⁵ Hearing Transcript at Page 31.

¹⁶ Direct Testimony of AT&T Broadband Witness David J. Sered, filed May 7, 2003, at Page 28.

Broadband has attempted to enforce the "indirect interconnection" provisions of the Shepherdsville Interconnection Agreement since early September, 2002.¹⁷ ALLTEL has refused AT&T Broadband's repeated efforts regarding the same, arguing everything from "indirect interconnection is not technically feasible,"¹⁸ to "BellSouth will not allow such an interconnection arrangement,"¹⁹ to "we have a rural exemption under the Act."²⁰ For the longest time, such refusal also included ALLTEL's failure to "load" AT&T Broadband's NPA/NXX's into ALLTEL's three Shepherdsville switches so that ALLTEL's customers in Shepherdsville could call AT&T Broadband customers.²¹

However, realizing the unreasonableness of its position, ALLTEL eventually agreed to "load" AT&T Broadband's codes into its Shepherdsville switches and to allow "indirect interconnection" with AT&T Broadband through BellSouth's tandem switch on an "interim" basis, but only after AT&T Broadband was forced to institute this proceeding and two

¹⁷ Direct Testimony of AT&T Broadband Witness Kenneth J. Rejba, filed May 7, 2003, at Page 3.

¹⁸ Hearing Transcript at Pages 156-157.

¹⁹ ALLTEL Answer dated February 10, 2003, at Page 6, Paragraph 11.

²⁰ KY PSC Intra-Agency Memorandum dated April 11, 2003, at Page 4. Although ALLTEL previously has asserted a "rural exemption" in this proceeding, during the hearing ALLTEL's counsel stated that ALLTEL was not asserting any "rural exemption" regarding "indirect interconnection" at the present time. Specifically, ALLTEL's counsel stated: "Like I said, we are a rural telephone company. We are exempt under 251(f)(1). We are not refusing indirect interconnection. We are not asserting our rural exemption to say we will not give indirect interconnection, and in fact, they're enjoying it today. All we're arguing about in this case is whether the point of interconnection would be in that for the purpose of who has to pay for the transport. That really is the sole issue, and, to that extent, we are not here saying that we are a rural telephone company and you can't have indirect interconnection, if that's what you want to call it, through the BellSouth tandem. You've got it; we'll provide it; but we're not going to pay for it, because we're not required to extend our network beyond our territory, and if, this Commission were to so decide against us on that, we do reserve the right to assert a 2 percent exemption. We have not filed any such request today, haven't waived it, but we'd reserve that right. So I guess what I'm saying is that I'm not sure that the 251(f)(1), you know, is a problem for you. It hasn't arisen, because we're willing to give indirect interconnection through the BellSouth tandem, as you're enjoying today, but we're not paying for it except to the extent that are providing full use of our network behind that point of interconnection to all of our exchanges without charging you because we've agreed to bill and keep. . ." Hearing Transcript Pages 213-114. In light of this statement by ALLTEL's counsel, AT&T Broadband will not further address ALLTEL's claim for a rural exemption in this brief.

²¹ Obviously, AT&T Broadband cannot offer local service in Shepherdsville until its customers' calls can be exchanged with ALLTEL's customers in Shepherdsville.

informal conferences were held by the Commission's Staff regarding the same.²² Thus, "indirect interconnection" currently is available and working between AT&T Broadband and ALLTEL in the Shepherdsville market.²³ To this point, at the hearing ALLTEL finally conceded that AT&T Broadband is entitled to "indirect interconnection" on a permanent basis.²⁴ The only caveat expressed by ALLTEL is that AT&T Broadband would be responsible for paying BellSouth's transit fees for ALLTEL's originated traffic sent to AT&T Broadband via BellSouth's tandem switch.²⁵ Of course, this caveat is unacceptable given that under the Act, AT&T Broadband is not obligated to pay originating transport costs for ALLTEL's originated traffic. Moreover, this caveat also is directly contrary to the provisions in the Shepherdsville Interconnection Agreement which require the originating party to pay BellSouth's transit service charges.

C. The "Dual Billing" Dispute.

AT&T Broadband has received complaints from customers in Lexington that ALLTEL continues to bill them for local service after they have been "switched" to AT&T Broadband.²⁶ Because AT&T Broadband also is billing the customer, this leads to the "dual billing" dispute.²⁷

²² Letter from Stephen B. Rowell of ALLTEL to AT&T Broadband's counsel (with copy to KY PSC) dated April 18, 2003.

²³ Hearing Transcript at Pages 138-139.

²⁴ Hearing Transcript at Pages 213-214.

²⁵ Id.

²⁶ Of course, if the "indirect interconnection" dispute in this proceeding is resolved in AT&T Broadband's favor, and AT&T Broadband reasonably can begin offering local service in Shepherdsville, this same "dual billing" problem will exist in Shepherdsville.

²⁷ Direct Testimony of AT&T Broadband Witness David J. Sered, filed May 7, 2003, at Pages 36-38.

This dispute exists because of the sequencing of the “porting” of telephone numbers from ALLTEL to AT&T Broadband. In order to ensure that customers are not without service or inconvenienced when their telephone numbers are ported, AT&T Broadband has requested that ALLTEL allow a forty-eight hour “window” as to when AT&T Broadband can activate the porting process.²⁸ Although ALLTEL has agreed to this forty-eight hour port “window,” it has not agreed that once the number is ported, it will stop billing the customer. Rather, if AT&T Broadband ports the number within the forty-eight hour window, but before ALLTEL’s established “firm order completion” date, ALLTEL continues to bill the customer until the “firm order completion” date.²⁹

As a result, ALLTEL continues to bill customers even though ALLTEL is no longer providing such customers with local service. However, because customers also begin receiving local service from AT&T Broadband with the porting of their telephone numbers from ALLTEL, AT&T Broadband begins billing customers on the port date.³⁰ Accordingly, ALLTEL’s continued billing of customers after the porting date leads to customers being “dual billed” by both AT&T Broadband and ALLTEL.

This continued billing by ALLTEL, even though ALLTEL no longer is providing service to customers, is discriminatory under KRS 278.170 when compared with the performance which ALLTEL provides itself when its customers disconnect from ALLTEL (and no longer receive local telephone service from any other carrier). In such cases, ALLTEL stops billing such customers upon such disconnection of service or “termination of

²⁸ ALLTEL Answer dated February 10, 2003, at Page 8, Paragraph 15.

²⁹ *Id.* at Page 12, Paragraph 43.

³⁰ Direct Testimony of AT&T Broadband Witness David J. Sered, filed May 7, 2003, at Pages 36-37.

the port” and not at a later date.³¹ ALLTEL’s actions also violate KRS 278.030(2) under which ALLTEL is statutorily obligated to “furnish adequate, efficient, and reasonable service.”

ARGUMENT

A. The “Indirect Interconnection” Dispute.

I. The Shepherdsville Interconnection Agreement Expressly And Unequivocally Provides For “Indirect Interconnection” With The Originating Party Obligated To Pay The Transit Service Charges Of The Third-party Provider.

A. Section 2.2 of Attachment 4 (Network Architecture).

AT&T Broadband’s entitlement to “indirect interconnection” through BellSouth’s tandem switch is expressly and unequivocally provided for under the terms of the Shepherdsville Interconnection Agreement. Accordingly, the Commission need look no further than the literal words of the contract to grant the relief requested by AT&T Broadband. Specifically, Section 2 of Attachment 4 of the contract entitled “Interconnection Methods” provides that both “direct” and “indirect interconnection” are available to AT&T Broadband. The applicable provisions which govern “indirect interconnection” are set forth in Section 2.2 of Attachment 4. The language is as follows:

Indirect interconnection provides for network interconnection between the Parties through a third party tandem provider performing a transit function. Under this arrangement, the originating Party has the responsibility to pay any applicable transit or tandem switched access fees and common transport associated with traffic exchanged between the parties.

Clearly, this language allows local traffic to be exchanged between AT&T Broadband and ALLTEL utilizing the tandem switch provided by BellSouth (as the third-party provider), with

³¹ ALLTEL Answer dated February 10, 2003, at Page 8, Paragraph 44.

the originating party clearly responsible for paying BellSouth's transit service charges. The language could not be more express or unequivocal.

B. Section 4.1 of Attachment 12 (Compensation).

In addition to express and unequivocal language found in Section 2.2 of Attachment 4, there is other language in the Shepherdsville Interconnection Agreement which expressly and unequivocally provides for "indirect interconnection," with the originating party being responsible for the transit service charges of the third-party provider. This additional language is found in Section 4.1 of Attachment 12. The language is as follows:

Where the local tandem function is performed by the Non-Party Provider to complete Local Traffic between the Parties, the Parties agree that the Originating Party will compensate the Non-Party Provider for any transit fees applicable to the exchange of Local Traffic and that compensation between the Parties for the exchange of Local Traffic will be as specified in Section 3.0 of this Attachment.³²

As is the case with Section 2.2 of Attachment 4, language in Section 4.1 of Attachment 12 also grants AT&T Broadband the right to "indirect interconnection," with the originating party responsible for the third-party provider's transit service charges. Again, the language could not be more express or unequivocal.

II. "Indirect Interconnection" Is Not Subject To ALLTEL's "Independent" Agreement Under The Shepherdsville Interconnection Agreement; Rather It Is Available to AT&T Broadband As A Matter Of Right.

In light of the fact that language in Section 2.2 of Attachment 4 and Section 4.1 of Attachment 12 is express and unequivocal, ALLTEL misinterprets the contract when it argues that other language, specifically, Section 1.1 of Attachment 4, means "indirect

³² In Section 3.0 of Attachment 12, AT&T Broadband and ALLTEL agreed to "bill and keep" for reciprocal compensation for the exchange of all Local Traffic and ISP bound traffic.

interconnection” is not available to AT&T Broadband as matter of right, but instead must be independently agreed to by ALLTEL. The language in Section 1.1 of Attachment 4 relied upon by ALLTEL for this misplaced interpretation of the contract states “. . . this attachment describes the *arrangements* that *may be utilized* by the Parties for interconnection of their respective networks . . .” In its misinterpretation, ALLTEL focuses on the term *arrangements* and the language *may be utilized* found in Section 1.1 of Attachment 4.³³ However, ALLTEL’s argument regarding both of these provisions is wrong.

First, in addition to the language found in Section 1.1 of Attachment 4 cited by ALLTEL, Section 2.0 of Attachment 4 specifically states that there are two *methods* of interconnection available, not two *arrangements* of interconnection available. The two *methods* of interconnection are listed as being “direct interconnection” and “indirect interconnection.” Second, relative to *arrangements*, Section 2.1 of Attachment 4 clearly reflects that this term is used to describe three different types of “direct interconnection” which are available; thus *arrangements* do not apply to “indirect interconnection.” In particular, Section 2.1 states:

Direct interconnection provides for network interconnection between the Parties through, including but not limited to, one or more of the following methods: 1) lease *arrangements*, 2) jointly provisioned facilities *arrangements* (including but not limited to SONET Ring and Midspan Fiber Meet), and 3) collocation *arrangements*.³⁴

Third, with respect to the second *method* of interconnection, namely “indirect interconnection,” Section 2.2 of Attachment 4 does not include the term *arrangements* at all. Accordingly, there simply is no way the Commission can reasonably construe *arrangements*

³³ Direct Testimony of ALLTEL Witness Stephen Weeks, filed May 7, 2003, at Page 10.

³⁴ Emphasis Added.

in Section 1.1 of Attachment 4 as meaning “indirect interconnection” under the contract as ALLTEL has proposed.

Moving to ALLTEL’s *may be utilized* argument, ALLTEL asserts that this language means that *arrangements* are available to AT&T Broadband only if they are independently agreed to by ALLTEL. The merit less nature of this argument was exposed at the hearing when ALLTEL Witness Hughes could not explain, what, if any, *arrangements* were available to AT&T Broadband absent any such independent agreement from ALLTEL. In other words, under ALLTEL’s interpretation of the Shepherdsville Interconnection Agreement, ALLTEL would have the right to veto any of the interconnection methods expressly and unequivocally provided for in the contract. As a result, AT&T Broadband would have no guarantee of any interconnection being available under the contract, thus making the contract a useless document for interconnection purposes. Consider the following exchange with ALLTEL Witness Hughes:

Q. . . . you’ll see here that Mr. Weeks says, “Section 1.1 of Attachment 4 expressly indicates that ‘this attachment describes the arrangements that may be utilized by the Parties for interconnection of their respective networks for the transmission and routing of Telephone Exchange Service and Exchange Access Service pursuant to Section 251 of the Act.’” And then he goes on to say, “Therefore, the initial sentence of Attachment 4 makes it clear the arrangements that are provided in this attachment are those that ‘may be utilized.’ It does not indicate that such are mandated in all instances.” Do you see that?

A. Yes, I do.

Q. Now, you, I think said earlier this is your language which ALLTEL has drafted and you have as your standard language; is that not correct?

A. Yes.

Q. Okay. What exactly does any CLEC get, if they agree to this language, if the interconnection arrangements which are set forth in Attachment 4 are not mandatory?

A. Are you asking me if they get something other than direct or indirect . . .

Q. What do they get? I mean, you basically are taking the position that . . . “may be utilized” doesn’t mean mandatory, so what do you get? This is your language. You drafted it, and you let me know how you believe it should be interpreted by a CLEC.

A. In this situation where it says “may be utilized,” that’s not stating that there’s not something else that could be agreed to if both parties agreed to that.

Q. Well, if the parties don’t agree with anything, what happens? What kind of interconnection is available?

A. I can’t answer that question.³⁵

As the foregoing exchange established, if the Commission accepts ALLTEL’s argument regarding the *may be utilized* language set forth in Section 1.1 of Attachment 4, the Commission would be concluding that ALLTEL agreed to absolutely nothing relative to interconnection in the Shepherdsville Interconnection Agreement. That conclusion also would mean that ALLTEL has absolute veto power regarding all interconnection methods, regardless of what the contract states. This result would be unreasonable, both as a matter of policy and contract interpretation. Accordingly, based on the express and unequivocal provisions of the contract, the Commission instead should hold that “indirect interconnection” is available to AT&T Broadband as a matter of right as clearly provided for

³⁵ Hearing Transcript at Pages 195-196.

under Section 2.2 of Attachment 4 and Section 4.1 of Attachment 12 of the Shepherdsville Interconnection Agreement.

III. The Shepherdsville Interconnection Agreement Does Not Require That The Third-party Provider's Tandem Switch Be Located Within ALLTEL's Exchange Boundary In Order For "Indirect Interconnection" To Be Utilized.

In yet another bizarre misinterpretation of the contract, ALLTEL argues that even if AT&T Broadband is entitled to "indirect interconnection" as a matter of right (with the originating party responsible for the third-party provider's transit service charges), the third-party provider's tandem switch must be located within ALLTEL's local exchange boundary. ALLTEL presumably takes this position because, as discussed above, it knows the language in Section 2.1 of Attachment 4 and in Section 4.1 of Attachment 12, is express and unequivocal in granting AT&T Broadband "indirect interconnection" as a matter of right under the contract.

Although offered as a reasonable interpretation of the contract, in making its *local exchange boundary* argument ALLTEL merely seeks to continue its monopoly hold on its Shepherdsville customers. As ALLTEL well knows, requiring that a third-party provider's tandem switch be located in ALLTEL's Shepherdsville local exchange boundary is the proverbial "poison pill" for avoiding "indirect interconnection." And avoiding "indirect interconnection" at any cost apparently is ALLTEL's objective in this proceeding. As ALLTEL Witness Weeks stated in his pre-filed testimony:

. . . the issue in this proceeding is who will have to bear the costs to haul the traffic from [ALLTEL's] Zoneton [switch] to the [AT&T Broadband] switch in Louisville. This obviously would not be an issue if [AT&T Broadband] had decided to place a switch in Zoneton or provided facilities to directly interconnect to the ALLTEL Kentucky network in Zoneton. The issue becomes even

more significant the farther away [AT&T Broadband] or any other person electing to order interconnection under the same agreement decides to place its switch. If [AT&T Broadband] had or would install a switch in Zoneton in proximity to its customers and prospective customers or would provide facilities to directly interconnect to the existing ALLTEL Kentucky local network, then the parties would be interconnected without the present dispute.³⁶

Regarding the legitimacy of ALLTEL's *local exchange boundary* argument, the Commission should recall that ALLTEL admitted at the hearing that neither Section 2.2 of Attachment 4, nor Section 4.1 of Attachment 12, includes any language which requires that the third-party provider's tandem switch be located in ALLTEL's exchange boundary.³⁷ Specifically, relative to Section 4.1 of Attachment 4, consider the following exchange with ALLTEL Witness Hughes:

Q. Well, let's look at the first sentence, then. It says, "Transit traffic is Local Traffic exchanged between the Parties that originates or terminates on the network of another telecommunications service provider where one of the Parties or the Non-Party Provider performs a local tandem function to complete the traffic between the others." Do you see that?

A. Yes.

Q. In that case, could BellSouth be the non-party provider?

A. No. Again, it's the same answer I've given before; no, it could not be.

Q. And that's because it's implied that this particular traffic has to be within your local—or the provider has to be within your local calling area; is that correct?

A. That's correct. It has to be within our local exchange area.

Q. It's implied?

³⁶ Direct Testimony of ALLTEL Witness Stephen Weeks, filed May 7, 2003, at Page 5.

³⁷ Hearing Transcript at Pages 186-194.

A. Yes.

Q. It doesn't say it; it's implied. That's your argument? That's ALLTEL's argument in this case?

A. For this sentence?

Q. Uh-huh.

A. Yes. It's not specifically stated in there.³⁸

Moreover, the "poison pill" impact of ALLTEL's "implied" *local exchange boundary* argument was clearly established when ALLTEL Witness Hughes was forced to admit at the hearing that no incumbent local exchange carrier, including BellSouth, would ever deploy a tandem switch in ALLTEL local exchange boundary.³⁹ Additionally, ALLTEL Witness Hughes also admitted that she knew of no competing local exchange carrier which had deployed a tandem switch in ALLTEL's exchange boundary.⁴⁰

Furthermore, in responding to cross-examination from the Commission's counsel, ALLTEL Witness Hughes admitted that ALLTEL's interpretation of contract (requiring that the third-party provider's tandem be located with ALLTEL's local exchange boundary) rendered meaningless all of the "indirect interconnection" provisions in the contract, and thus "renegotiation" of the contract with ALLTEL would be required before AT&T Broadband would have any right to "indirect interconnection:"

Q. . . . I wanted to look at the famous 2.2 Section. If, as you've testified, this section has no relevance for - no relevance outside of your local exchange area, what kind of third party tandem services are provided within your service area?

³⁸ Hearing Transcript at Pages 194-195.

³⁹ *Id.* at 189.

⁴⁰ *Id.* at 186-187.

- A. Are we talking ALLTEL Kentucky?
- Q. That's who the agreement is with; right? The Shepherdsville. . .
- A. That's correct. Okay. I just wanted to make clear. Today there is not another third party arrangement in our territory that I am aware of, another provider. That doesn't preclude that from occurring.
- Q. Okay. So under the testimony that you've given today, Section 2.2 could be eliminated from this contract and it would make no difference? That would be no effect? In other words, the meaning that you give to this section, under the operations you have in your territory for Shepherdsville today, mean that there is no third party tandem service?
- A. That's as of today. That's not to say that might not happen in the future, that both parties would not come back and renegotiate and look at the options that are available.⁴¹

ALLTEL Witness Hughes also could not answer whether ALLTEL was providing "indirect interconnection" in any state under its illogical *local exchange boundary* argument regarding Section 2.2 of Attachment 4 of the contract:

- Q. And so has this Section 2.2 ever come into effect? Is there any indirect interconnection?
- A. I do not know since—are you saying for this particular contract? No. it has not. Are you asking ALLTEL systemwide?
- Q. Well, that was my next question, but, for the Shepherdsville operations, under your interpretation, is there no such thing as indirect interconnection at this point?
- A. It's not in place today.

⁴¹ Id. at 236-237.

- Q. Okay, and then, under ALLTEL's interpretation of this 2.2, is there any circumstance in ALLTEL's operations anywhere in the state or in the country where there is such a thing as this indirect interconnection?
- A. I do not know that since I'm not responsible for all the agreements. I do not know.⁴²

As the foregoing establishes, ALLTEL's *local exchange boundary* argument is not supported by the literal words of the contract. It also makes no practical sense given current practices in the telecommunications industry. Moreover, because there has been no finding that the contract is ambiguous, under Kentucky law (which governs interpretation of the contract along with federal law),⁴³ the Commission is precluded from considering ALLTEL's "parol evidence" that it is "implied" in Section 2.2 of Attachment 4, and Section 4.1 of Attachment 12 of the contract that the third-party provider's tandem switch must be located in ALLTEL's local exchange boundary.⁴⁴ As a result, ALLTEL's "implied" argument also must be rejected by the Commission. Furthermore, because the contract language was drafted by ALLTEL,⁴⁵ under Kentucky law the Commission also must construe the contract language against ALLTEL when interpreting the contract.⁴⁶ In other words, Kentucky law is clear that when construing a contract, disputed language must be construed against the drafter of the language. As a result, the Commission must give the benefit of the doubt to

⁴² Hearing Transcript at Pages 238-239. Although the Commission's counsel asked that ALLTEL provide an answer to this question in a Supplemental Data Request, *Id.* Page 239, such Supplemental Data Request has not yet been provided by ALLTEL.

⁴³ In particular, Section 45, Governing Law, of the General Terms and Conditions of the Shepherdsville Interconnection Agreement, provides: "This Agreement shall be governed by and construed in accordance with federal law, the Act, and the FCC's Rules and Regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of Kentucky, without regard to its conflict of laws principles, shall govern. The Parties submit to personal jurisdiction in Louisville, Kentucky."

⁴⁴ *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 2002 WL 31875653 (Ky. App. 2002); *White Log Jellico Co., Inc. v. Zipp*, 32 S.W.2d 92 (2000); *Friction Materials Co., Inc. v. Stinson*, 833 S.W.2d 388 (1992); and *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (2000).

⁴⁵ Hearing Transcript at Pages 169-170.

⁴⁶ *Bays v. Mahan*, 362 S.W.2d 732 (1962) as cited in *Wiggins v. Schubert Realty and Investment Company*, 854 S.W. 2d 794, 797 (1993).

AT&T Broadband in determining what the contract provides regarding “indirect interconnection.”

IV. ALLTEL’S Argument That AT&T Broadband Should Be Required To “Directly Interconnect” With ALLTEL Through Insight Facilities Is Offered Solely To Divert The Commission’s Attention From The Express And Unequivocal Provisions Of The Contract.

Although the Shepherdsville Interconnection Agreement expressly and unequivocally grants AT&T Broadband the right to “indirect interconnection,” ALLTEL nevertheless argues that AT&T Broadband should be required to “directly interconnect” with ALLTEL.⁴⁷ Knowing that AT&T Broadband has access to Insight’s “last mile” or “local loop” to the customer,⁴⁸ ALLTEL assumes that AT&T Broadband also has access to Insight “transport” facilities in all localities, and thus can easily and “directly” interconnect with ALLTEL through these additional Insight facilities.

This is a classic “red herring” argument offered solely to divert the Commission’s attention from the literal words of the contract. Like other ALLTEL arguments, this one also should be ignored by the Commission because the contract clearly gives AT&T Broadband the right to choose “indirect interconnection” over “direct interconnection.” Additionally, as AT&T Broadband Witness Rejba testified, AT&T Broadband does not have access to Insight facilities in order to make such implement “direct interconnection” with ALLTEL in

⁴⁷ Hearing Transcript at Pages 110, 130, 144, 150-151.

⁴⁸ Direct Testimony of AT&T Broadband Witness Kenneth J. Rejba, filed May 7, 2003 at Pages 140-144.

Shepherdsville.⁴⁹ Furthermore, when asked whether AT&T Broadband should be required to obtain access to such facilities from Insight (or any other facilities provider) in order to implement “direct interconnection” with ALLTEL, AT&T Broadband Witness Rejba testified as follows:

Q. You’ve discussed with Mr. Rowell [ALLTEL’s counsel] Exhibit 1 to Mr. Weeks’ [ALLTEL Witness Weeks] prefiled testimony about the midspan meet interconnection option . . .

A. Yes, ma’am.

Q. Why is that not appropriate for AT&T Broadband in ALLTEL Shepherdsville?

A. I don’t own the fiber. I have nothing to midspan meet with. I could lease fiber from another company to meet them at midspan, but I would incur the cost of building to that midspan, lease of the fiber, and again, I have an unknown delta as to the number of customers that I will garner in their territory. So that is an expense that, at this time, is not economically feasible to bring competition to Zoneton. If competition is successful and grows in Zoneton, then obviously anything is available to us. That’s why this piece of contract is so critical. We don’t know what market share we have. We hope, but we simply do not know. Rather than sink capital in the ground and abandon at a later date just doesn’t make sense.

⁴⁹ Hearing Transcript at Pages 142-144; 150. At the hearing, AT&T Broadband was requested to make various agreements between AT&T Broadband (and/or its parent) and Insight available to ALLTEL’s counsel under a protective agreement (as well as a diagram of Insight facilities in the Shepherdsville market), so that ALLTEL’s counsel could determine whether AT&T Broadband has existing contractual rights to Insight “transport” facilities in order to allow “direct interconnection” between AT&T Broadband’s Louisville switch and ALLTEL’s Zoneton switch. Hearing Transcript at Pages 110-11. Such agreements and diagram were made available to ALLTEL’s counsel by AT&T Broadband under a protective agreement and confirm that AT&T Broadband’s “access” to Insight facilities in the Shepherdsville market is limited to utilizing Insight’s “local loop” or “last mile” facilities to offer telephone services, and does not include access to Insight’s “transport” facilities. Nevertheless, as AT&T Broadband has not yet been made aware of any specific contractual arguments which ALLTEL may make regarding AT&T Broadband’s right to access Insight’s “transport” facilities under these agreements and diagram, AT&T Broadband reserves the right to address any such arguments in its Reply Brief filed in this proceeding.

- Q. To what degree have you investigated that option of direct interconnection in Shepherdsville and the cost estimates, and so on, versus your projected revenues?
- A. We have talked to other vendors and providers, including Insight, as to what fiber is available, what a strand of fiber would cost us, what the cost of the OC-3 capital equipment would be at both locations, the cost of the collocation physically located in Zoneton, if I had to do that rather than a midspan fiber meet. All of those costs associated with it will not have a payoff period even if I were to capture 100 percent of the market for the next three years. So, in other words, if I'm not 100 percent successful and I take every ALLTEL customer, I have a long payback period to do that kind of work . . .⁵⁰

As AT&T Broadband Witness Rejba testified, there are sound economic reasons why AT&T Broadband seeks to implement "indirect interconnection." Moreover, AT&T Broadband currently does not have access to Insight's "transport" facilities in Shepherdsville, and it should not be ordered to obtain the same in light of its existing contract with ALLTEL. Accordingly, the Commission should reject ALLTEL's argument that AT&T Broadband should be forced to obtain "indirect interconnection" facilities from Insight or any other facilities provider.

V. Although AT&T Broadband Is Contractually Obligated To "Directly Interconnect" With ALLTEL in Lexington, AT&T Broadband Should Not Be Required To "Directly Interconnect" With ALLTEL In Shepherdsville.

In yet another classic "red herring" argument, at the hearing ALLTEL argued that because AT&T Broadband is "directly interconnected" with ALLTEL in Lexington, it should be required to "directly interconnect" with ALLTEL in Shepherdsville.⁵¹ This argument ignores the fact that two different interconnection agreements—negotiated years apart—with

⁵⁰ Hearing Transcript at Pages 150-152.

⁵¹ Hearing Transcript at Pages 16-17.

different interconnection and compensation provisions—govern the parties’ activities relative to the Lexington and Shepherdsville markets. Specifically, the contract which governs interconnection in Lexington is an interconnection agreement which was negotiated in 1999 by AT&T Communications of the South Central States, Inc. and GTE South, Incorporated (“GTE Interconnection Agreement”).⁵² Unlike the Shepherdsville Interconnection Agreement (which governs interconnection between Louisville and Shepherdsville), the GTE Interconnection Agreement contains no “indirect interconnection” provisions.⁵³ Moreover, this contract also requires that the point of interconnection (“POI”) for “direct interconnection” be “within GTE’s networks,” and contains lower compensation provisions for “direct interconnection” than the Shepherdsville Interconnection Agreement.⁵⁴ Accordingly, the Commission also should reject this “red herring” argument given that the contractual interconnection obligations are totally different for Lexington and Shepherdsville.

VI. Section 251(c)(2) Of The Act Governs “Direct Interconnection” While Section 251(a)(1) Of The Act Governs “Indirect Interconnection;” Accordingly, Section 251(c)(2)’s Obligation That Interconnection Take Place “With” Or “At” The Local Exchange Carrier’s Network Does Not Apply To “Indirect Interconnection.”

In addition to ALLTEL’s express and unequivocal obligations to provide “indirect interconnection” under the Shepherdsville Interconnection Agreement, ALLTEL also is obligated to provide “indirect interconnection” under the Act. Yet, in another attempt to confuse the Commission, ALLTEL argues that the Act requires that such interconnection (1)

⁵² As previously discussed in Footnote 1, ALLTEL purchased (and now operates) exchanges from Verizon South, Incorporated (formerly GTE South, Incorporated) in Lexington. Thus, the interconnection arrangements between AT&T Broadband and ALLTEL in Lexington have been “inherited” by ALLTEL from Verizon South, Incorporated by virtue of ALLTEL’s 2002 purchases of Verizon South, Incorporated’s exchanges in Lexington.

⁵³ Hearing Transcript at Pages 72-73. For the Commission’s convenience, a copy of the interconnection provisions from the GTE Interconnection Agreement are attached to this Brief as Exhibit 1.

⁵⁴ GTE Interconnection Agreement, Part IV at Section 37.2.

always be “*with*” or “*at*” ALLTEL’s network; and (2) always “*within*” ALLTEL’s local exchange boundary. These two caveats necessarily would mean that AT&T Broadband would be forced to “directly interconnect” with ALLTEL because, by definition, “indirect interconnection” can never be “*with*” or “*at*” ALLTEL’s network and can never be “*within*” ALLTEL’s local exchange boundary. Moreover, neither of these caveats is required by the Act. Rather, ALLTEL misconstrues Section 251(c)(1) of the Act to arrive at its first “*with*” or “*at*” caveat, and then pulls its second “*within*” ALLTEL’s local exchange boundary caveat out of thin air.

The Commission only has to look to the literal words of the Act to determine that ALLTEL is reaching in its interpretation of the Act. In particular, Section 251(a)(1) governs both “direct and indirect interconnection” stating that “[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities with other telecommunications carriers.” There is no requirement in this language that “indirect interconnection” must be “*with*” or “*at*” the local exchange carrier’s network or “*within*” the local exchange carrier’s exchange boundary. Moreover, if such were the case, there would be no “indirect interconnection” as the term itself logically implies that the interconnection will be “indirect,” meaning that there always will be a third party between the requesting carrier and the other carrier. Thus, under these circumstances it is physically impossible for the requesting carrier to connect “*with*” or “*at*” the other carrier’s network, or “*within*” the other carrier’s local exchange boundary.

ALLTEL attempts to bootstrap its way to its “*with*” or “*at*” its network and “*within*” its local exchange boundary by arguing that Section 251(c)(2) also applies to “indirect interconnection.” Clearly this is not the case. Rather, Section 251(c)(2) of the Act places

additional interconnection responsibilities on incumbent local exchange carriers relative only to “direct interconnection:”

Additional Obligations Of Incumbent Local Exchange Carriers—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties. . . (2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point *within the carrier’s network*; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.⁵⁵

Importantly, Section 251(a)(1) (which is the only section of the Act which mentions “indirect interconnection”) does not contain language stating that the interconnection must be “*with*” or “*at*” the local exchange carrier’s network or “*within*” the local exchange carrier’s boundary. This is because such a requirement would make the “indirect interconnection” language in Section 251(a)(1) nonsensical in all respects. There simply is no way to have “indirect interconnection” if the requesting carrier is obligated to interconnect “*with*” or “*at*” the local exchange carrier’s network, or “*within*” the local exchange carrier’s exchange boundary as ALLTEL argues in this proceeding. Thus, Section 251(c)(2) does not replace or supercede the “indirect interconnection” obligations found in Section 251(a)(1). Rather, Section 251(c)(2) establishes additional obligations where a carrier seeks to “directly interconnect” with an incumbent local exchange carrier. In fact, at the hearing ALLTEL

⁵⁵ Emphasis Added.

Witness Hughes agreed that there is no language in Section 251(a)(1) which requires “indirect interconnection” be “*with*” or “*at*” the local exchange carrier’s network or “*within*” the local exchange carrier’s exchange boundary.⁵⁶

In this proceeding, AT&T Broadband is not seeking “direct interconnection” with ALLTEL under Section 251(c)(2). Rather, AT&T Broadband seeks just the opposite, “indirect interconnection” under Section 251(a)(1) of the Act, and Section 251(a)(1) has no requirement that such “indirect interconnection” be “*with*” or “*at*” the local exchange carrier’s network⁵⁷ or “*within*” the local exchange carrier’s exchange boundary. Accordingly, the Commission should reject ALLTEL’s argument on this point as well.

VII. Section 251(c)(2) Also Is Not Applicable For Purposes Of Establishing A POI Given That The Parties Already Had Agreed To Financial Responsibility Regarding The Transport Of Originating Traffic When “Indirect Interconnection” Is Utilized Under The Shepherdsville Interconnection Agreement.

As this Commission is well aware, litigation regarding what constitutes “interconnection with the local exchange carrier’s network” as set forth in Section 251(c)(2) of the Act involves establishing the POI between two carriers for purposes of determining how an originating carrier must transport its traffic to the terminating carrier.⁵⁸ This

⁵⁶ Hearing Transcript at Pages 208-210.

⁵⁷ To the extent the Commission finds that the language in Section 251(c)(2) regarding “within the carrier’s network” implies that interconnection must take place within ALLTEL’s local exchange boundary, this would be illogical given that ALLTEL’s network extends beyond ALLTEL’s local exchange boundary in light of its jointly provisioned and jointly owned meet point arrangement which runs from ALLTEL’s Zoneton switch to BellSouth’s tandem in Louisville. *See*, Hearing Transcript at Pages 201-204.

⁵⁸ As but one example, *see*, *In the Matter of the Petition of WorldCom, Inc., et. al. Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration*, FCC CC Docket Nos. 00-218, 00-249, 00251, July 17, 2002 at Paragraphs 36-71.

determination is important because it establishes financial obligations relative to the transport of each carrier's originating traffic.⁵⁹

Ignoring that a POI is necessary in order to establish financial responsibility for the transport of originating traffic, ALLTEL asserts that because the Shepherdsville Interconnection Agreement provides in Section 1.3 of Attachment 4 that the Parties would agree to a POI in a yet to be negotiated "Exhibit A," AT&T Broadband is financially obligated to "pick-up" ALLTEL's originating traffic at the "edge" of ALLTEL's local exchange boundary.⁶⁰ ALLTEL argues that AT&T Broadband should be required to "pick up" ALLTEL's originating traffic by either (1) "directly interconnecting" with ALLTEL at ALLTEL's local exchange boundary,⁶¹ or (2) paying BellSouth's transit fees for any ALLTEL originated traffic which is terminated to AT&T Broadband through BellSouth's tandem switch when "indirect interconnection" is utilized.⁶²

This is yet another misinterpretation of the contract, as well as an improper analysis regarding the significance of establishing a POI. The contract is clear that whenever "indirect interconnection" is used for the exchange of traffic, the Parties expressly and unequivocally agreed in Section 2.2 of Attachment 4 that "the originating Party has the responsibility to pay any applicable transit or tandem switched access fees and common transport associated with traffic exchanged between the Parties," thus making unnecessary and irrelevant agreement on a POI. Moreover, this obligation is repeated in Section 4.1 of Attachment 12 where the Parties agreed:

⁵⁹ Id. at Paragraphs 37-38.

⁶⁰ Direct Testimony of ALLTEL Witness Stephen B. Weeks, filed May 7, 2003, at Pages 10-11.

⁶¹ Id. at Pages 6-7.

⁶² Id. at Page 8.

[w]here the local tandem function is performed by the Non-Party Provider to complete Local Traffic between the Parties, the Parties agree that the Originating Party will compensate the Non-Party Provider for any transit fees applicable to the exchange of Local Traffic and that compensation between the Parties for the exchange of traffic performed indirectly will be as specified in Section 3.0 of this Attachment.⁶³

In making its POI argument, once again ALLTEL attempts to confuse the Commission, suggesting that contract provisions which logically only apply to “direct interconnection” also apply to “indirect interconnection.” AT&T Broadband does not dispute that Section 1.3 of Attachment 4 provides that the Parties were to agree to a POI to be set forth on “Exhibit B” relative to “direct interconnection.” However, “Exhibit B” was never executed (and apparently never discussed) by the Parties.⁶⁴ This fully supports AT&T Broadband’s position that selection of a POI was not contemplated regarding “indirect interconnection,” and indeed is unnecessary and irrelevant because the Parties expressly and unequivocally agreed in both Sections 2.2 of Attachment 4 and Section 4.1 of Attachment 12 that whenever a third-party tandem provider is utilized to transport traffic between the Parties—again, the classic “indirect interconnection” scenario—that the originating party is responsible for paying the applicable transit fees of the third-party provider. In other words, by agreeing to the language in these two sections regarding payment of the third-party provider’s transit fees, the Parties agreed *defacto* to the financial responsibilities between them regarding the transport of their originating traffic, thus making the establishment of a POI for “indirect interconnection” traffic both unnecessary and irrelevant. Accordingly, the Commission should view ALLTEL’s POI argument for what it is—nothing more than a clever

⁶³ In Section 3.0 of Attachment 12, the Parties agreed to “bill and keep” for the reciprocal exchange of all Local Traffic and ISP bound traffic between them.

⁶⁴ Direct Testimony of ALLTEL Witness Stephen B. Weeks, filed May 7, 2003, at Pages 10-11.

attempt to obfuscate regarding its express and unequivocal obligations under the contract by misconstruing various contract provisions and ignoring the significance of establishing a POI.

VIII. Requiring AT&T Broadband To “Pick Up” ALLTEL’s Originated Traffic At ALLTEL’s Local Exchange Boundary Would Violate The Commission’s Long Standing Rule That The Originating Carrier Is Required To Pay The Originating Costs Of Its Originated Traffic.

In numerous interconnection disputes, this Commission has established a long-standing policy that an originating carrier is required to pay the originating costs of its originated traffic.⁶⁵ In particular, the Commission has acknowledged that Federal Communications Commission Rule 51.703(b) specifically requires that “. . . [a] LEC may not access charges on any other telecommunications carrier for local telecommunications traffic that originate on the LEC’s network.”⁶⁶ In particular, in the *Level 3 Order*, the Commission rejected the very same argument made by ALLTEL in this proceeding that AT&T Broadband must always “pick up” ALLTEL originated traffic at ALLTEL’s local exchange boundary:⁶⁷

According to FCC rules and decisions, carriers must pay for their own originating traffic. BellSouth argues that the rule requiring the originating carrier to pay for originating traffic applies only within a unified local calling area. However, FCC Rule 51.701(b)(1) defines local telecommunications traffic to include traffic that originates and terminates within a local service area defined by the state commission. BellSouth offers local service in Kentucky which includes LATA-wide calling. Moreover, in *TRS Wireless, supra*, the FCC stated that LECs must bear the cost of transporting originating traffic to anywhere within an MTA (major trading area), an area generally larger than a LATA. BellSouth has failed to

⁶⁵ See, *In the Matter of Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Communications Act of 1996*, Kentucky Public Service Commission; Case No. 2000-404; Order dated March 14, 2001 (“*Level 3 Order*”); Pages 2-3; and *In the Matter of Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement With Verizon South, Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*; Kentucky Public Service Commission; Case No. 2001-224; Order dated November 15, 2001; Page 16.

⁶⁶ *Brandenburg Order* at Page 17.

⁶⁷ As previously discussed in this brief, ALLTEL takes this position regardless of whether AT&T Broadband is utilizing “direct” or “indirect interconnection.”

establish the costs incurred to reach Level 3's POI and has failed to establish that the rates BellSouth charges its own customers do not cover those costs. In the absence of such a showing, the Commission will not deviate from the well established principle that the carrier must pay the originating costs of its own traffic.⁶⁸

ALLTEL argues that the Commission's *Level 3 Order* is not applicable in this proceeding because ALLTEL does not offer LATA-wide local calling.⁶⁹ However, as the above excerpt from the *Level 3 Order* establishes, the Commission (citing *TRS Wireless*)⁷⁰ acknowledged that LECs are obligated to bear the cost of transporting their originating traffic well beyond LATA boundaries. Accordingly, ALLTEL's reliance on no LATA-wide local calling to its customers to distinguish its interconnection obligation from the *Level 3 Order* is not on point. Moreover, as even ALLTEL acknowledges, calls at issue in this proceeding are calls from an AT&T Broadband customer in the Shepherdsville market to an ALLTEL customer in the Shepherdsville market, and visa versa.⁷¹ Thus, even if such calls are transported through BellSouth's Louisville tandem switch, the "start" and "end" points of the calls remain within ALLTEL's local exchange boundary. Therefore, even accepting ALLTEL's strained interpretation of the Commission's *Level 3 Order*, the calls in question clearly do begin and end in ALLTEL's local exchange boundary.

Given the Commission's clear mandate that an originating carrier is obligated to pay the transport costs of its originated traffic, the Commission must reject ALLTEL's argument that AT&T Broadband is obligated to "pick up" ALLTEL's originated traffic at ALLTEL's local exchange boundary. To hold otherwise would mean the Commission would require

⁶⁸ *Level 3 Order* at Pages 2-3.

⁶⁹ *See*, Letter of Stephen B. Rowell of ALLTEL to AT&T Broadband's counsel (with a copy to the KY PSC) dated April 25, 2003.

⁷⁰ *TRS Wireless, LLC et al. V. U.S. West Communications Inc. et al.*, File Nos. E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, Paragraph 34 (rel. June 21, 2000).

AT&T Broadband to improperly pay for part of the transport costs of ALLTEL's originated traffic. Such would be contrary to both prior Commission and FCC decisions regarding the transport of originating traffic.

IX. KRS 278.030(2) Also Requires That ALLTEL Allow "Indirect Interconnection."

In addition to ALLTEL's obligations under both the contract and the Act, state law also provides a basis for requiring the ALLTEL to provide "indirect interconnection" as requested by AT&T Broadband. In particular, KRS 278.030(2) requires that:

Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

Based upon the above provision, ALLTEL is obligated to provide adequate, efficient, and reasonable service in Kentucky, both to its end user customers, as well as to its competitors seeking interconnection. In this respect, there is nothing in KRS 278.030(2) which limits the same to ALLTEL's end user customers.

With respect to interconnection, there is no dispute in this proceeding that the "indirect interconnection" requested by AT&T Broadband is technically feasible—in fact such interconnection currently is being provided by ALLTEL.⁷² Additionally, there is no dispute in this proceeding that BellSouth is both willing and contractually obligated to AT&T Broadband to provide such transit service.⁷³ Finally, AT&T Broadband has provided

⁷¹ See, Direct Testimony of ALLTEL Witness Stephen B. Weeks, filed May 7, 2003, at Pages 4-5.

⁷² Hearing Transcript at Page 138.

⁷³ See, Footnote 11 *infra*.

uncontroverted testimony that such “indirect interconnection” is an efficient method of interconnection given current network deployment options.⁷⁴

Accordingly, there is no doubt that independent of ALLTEL’s contractual obligations, as well as its obligations under the Act, state law also requires that ALLTEL provide “indirect interconnection” to AT&T Broadband. Moreover, as this Commission previously held in another transit traffic dispute in which Verizon similarly proposed a “highly technical parsing of a single section of the parties’ contract,” this Commission is “. . . the regulatory body charged by the General Assembly to ensure that Kentuckians receive adequate and nondiscriminatory utility service upon reasonable terms and conditions. . . .”⁷⁵ Clearly, denying AT&T Broadband the ability to “indirectly interconnect” with ALLTEL under the foregoing circumstances does not constitute providing service under reasonable terms and conditions. As such, based on state law, the Commission should require ALLTEL to honor AT&T Broadband’s request for “indirect interconnection” as set forth in this proceeding.

B. The “Dual Billing” Dispute.

I. KRS 278.170 and KRS 278.030(2) Prohibit ALLTEL From Continuing To Bill AT&T Broadband Customers Once “Porting” Of Telephone Numbers Occurs.

ALLTEL is prohibited from continuing to bill AT&T Broadband customers after their telephone numbers have been “ported” from ALLTEL to AT&T Broadband under both KRS 278.170(1) and KRS 278.030(2). Both provisions contain a “reasonableness” standard relative to ALLTEL’s obligation to provide service both to its customers and competitors.

⁷⁴ See, Direct Testimony of AT&T Broadband Witness David J. Sered, filed May 7, 2003, at Pages 13-18.

⁷⁵ *In the Matter of Brandenburg Telecom LLC v. Verizon South, Inc.*; Kentucky Public Service Commission; Case No. 2002-00143; May 23, 2003; Pages 3-5.

In particular, KRS 278.170(1) prohibits ALLTEL from “. . . giving any unreasonable preference or advantage. . . or any unreasonable prejudice or disadvantage. . . for doing a like and contemporaneous service under the same or substantially the same conditions.” ALLTEL admits that “. . . upon termination of service ALLTEL discontinues billing retail customers.”⁷⁶ In comparison, ALLTEL admits that it continues billing customers of AT&T Broadband until the “firm order completion date.”⁷⁷ Because ALLTEL has agreed that AT&T Broadband may “port” numbers before the “firm order completion date,” ALLTEL’s service to the customer may be terminated before the “firm order completion date.” Yet, unlike ALLTEL’s practice to stop billing on the date of “termination of service” for its own customers, ALLTEL continues billing AT&T Broadband customers after the date of the “port” or “termination of service” until the “firm order completion date.” This is clearly discriminatory under KRS 278.170(1) in that ALLTEL’s customers are treated differently for billing purposes than those of AT&T Broadband.

Similarly, under KRS 278.030(2) ALLTEL is obligated to furnish “. . .adequate, efficient and reasonable service. . .” Clearly, reasonable service does not include continuing to bill a customer for service once the customer’s telephone number has been “ported” to another carrier which is now providing service to the customer.

II. Competition Will Not Develop In The Lexington And Shepherdsville Markets Unless The Commission Orders ALLTEL To Stop Billing AT&T Broadband Customers Once Telephone Numbers Have Been “Ported” To AT&T Broadband.

It is axiomatic that in order for competition to develop in the Lexington and Shepherdsville local telephone markets customers cannot be subjected to “dual billing.”

⁷⁶ ALLTEL Answer dated February 10, 2003, at Page 12, Paragraph 44.

⁷⁷ Id. at Paragraph 43.

Plain and simple, there is no way that customers will change telephone providers if they will be billed by two telephone companies for some period of time afterwards, when they are only receiving service from one company.

ALLTEL's solution to the "dual billing" issue is to prohibit AT&T Broadband from being able to "port" the customer's telephone number until the "firm order completion date."⁷⁸ This is another proverbial "poison pill" for ALLTEL knows that AT&T Broadband and other competitors must be able to accommodate changes in customer schedules in order to switch a customer's service from ALLTEL to AT&T Broadband. As a result, AT&T Broadband and other competitors need more flexibility to complete the "porting" of the telephone numbers than a single day.⁷⁹ Without such flexibility, if the "port" cannot take place on the "firm order completion date," AT&T Broadband would have to issue another order to ALLTEL to schedule yet another "porting" date, meaning, for all practical purposes, even further delays in switching the customer to its desired telephone company.

This is clearly a situation where the Commission should accommodate customers in order for robust competition to take hold. Switching to another local telephone company should be a "user friendly" process whereby "dual billing" does not occur. Unfortunately, ALLTEL's proposed solution does not put the customer first—but instead only increases the odds that ALLTEL will be able to continue its monopoly on local telephone service in both the Lexington and Shepherdsville market. The instant "dual billing" dispute provides the Commission with the perfect opportunity to strike the balance in favor of customers and not the monopoly telephone company.

CONCLUSION

For all the foregoing reasons, AT&T Broadband respectfully requests that the Commission grant the straight forward relief requested by AT&T Broadband: (1) enforcement of express and unequivocal provisions allowing “indirect interconnection” set forth in the interconnection agreement currently in effect between AT&T Broadband and ALLTEL in Shepherdsville Interconnection Agreement, and as required by Section 251(a) of the Act and KRS 278.030(2); and (2) prohibiting ALLTEL from continuing to bill AT&T Broadband customers once telephone numbers have been “ported” from ALLTEL to AT&T Broadband in both Shepherdsville and Lexington, as required by KRS 278.170 and KRS 278.030(2).

⁷⁸ Direct Testimony of ALLTEL Witness Stephen B. Weeks, filed May 7, 2003, at Pages 2-3.

⁷⁹ Direct Testimony of AT&T Broadband Witness David J. Sered, filed May 7, 2003, at Pages 36-37.

Respectfully submitted, this the 12th day of December, 2003.

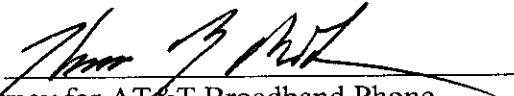
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EXHIBIT 1

TO

AT&T BROADBAND PHONE OF
KENTUCKY, LLC BRIEF
DATED 12/12/03

Interconnection, Resale and Unbundling
Agreement between AT&T
Communications of the South Central
States, Inc. and GTE South Incorporated

7/2/99

INTERCONNECTION, RESALE
AND UNBUNDLING
AGREEMENT
between
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.
and
GTE SOUTH INCORPORATED

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The filing of this arbitrated Agreement with the Public Service Commission of the Commonwealth of Kentucky in accordance with the Order, dated February 14, 1997 (the "Order"), of the Public Service Commission of the Commonwealth of Kentucky with respect to In the Matter of The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Case No. 96-478, does not in any way constitute a waiver by either AT&T Communications of the South Central States, Inc. or GTE South Incorporated of any right which any such Party may have to appeal to a competent court of law, or to petition the Public Services Commission of the Commonwealth of Kentucky for reconsideration of, any determination contained in the Order, or any provision included in this Agreement pursuant to the Order.

In this document the Parties attempt to comply with the Order which directs the Parties to reduce to contractual language the substantive provisions and directives of the Order. Nothing contained herein shall be construed or is intended to be a concession or admission by either Party that any such provision of the Order or the language herein complies with the duties imposed by the Telecommunications Act of 1996, the decisions of the FCC and the Public Service Commission of the Commonwealth of Kentucky, or other law, and each Party thus expressly reserves its full right to assert and pursue claims that the Order does not comport with applicable law.

PREFACE

AGREEMENT

This Agreement is entered into by and between AT&T Communications of the South Central States, Inc., a New York corporation having an office at 1200 Peachtree St. N.E., Atlanta, Georgia 30309, in its capacity as a certified provider of local dial-tone service ("AT&T"), and GTE South Incorporated, a Virginia corporation, having an office for purposes of this Agreement at 600 Hidden Ridge, Irving, Texas 75038 ("GTE"), in its capacity as an incumbent local exchange carrier. This Agreement covers services only in the Commonwealth of Kentucky (the "State").

RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, Telecommunications Carriers, with respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights of way and, in certain cases, the offering of certain unbundled network elements and physical collocation of equipment in Local Exchange Carrier premises, and

WHEREAS, GTE is an Incumbent Local Exchange Carrier; and

WHEREAS, AT&T is a Telecommunications Carrier and has requested that GTE negotiate an agreement with AT&T for the provision of Network Elements, Local Services for resale, collocation and access to poles, ducts, conduits and rights of way and the reciprocal provision of interconnection services pursuant to the Act and in conformance with GTE's and AT&T's duties under the Act; and

WHEREAS, interconnection between competing Local Exchange Carriers (LECs) is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network and the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon points of interconnection.

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PART IV: INTERCONNECTION PURSUANT TO SECTION 251(C)(2)**36. Scope**

Section 37 describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Local Traffic and Exchange Access traffic between the respective business and residential customers of the Parties pursuant to the Act. Interconnection may not be used solely for the purpose of originating a Party's own interexchange traffic. Sections 38 to 39 prescribe the specific logical trunk groups (and traffic routing parameters) which will be configured over the physical Interconnections described in this Part related to the transmission and routing of Local Traffic and Exchange Access traffic, respectively. Other trunk groups, as described in this Agreement, may be configured using this architecture.

37. Interconnection Points and Methods.

37.1 In each LATA identified pursuant to the procedures of Section 37.6, AT&T and GTE shall Interconnect their networks at the GTE and AT&T Wire Centers identified in such notice for the transmission and routing within that LATA of Local Traffic and Exchange Access traffic.

37.2 Interconnection in each LATA shall be accomplished at any technically feasible point within GTE's networks for a given LATA, including through collocation in GTE's Wire Centers as provided in Attachment 3. AT&T shall designate a minimum of one interconnection point within a LATA. If AT&T desires a single interconnection point within a LATA, AT&T shall ensure that GTE maintains the ability to bill for the services provided. AT&T may interconnect at one tandem in the LATA for exchange of local, mandatory EAS and IntraLATA toll traffic by bringing separate trunk groups to that interconnection point for each tandem in that LATA and then by using dedicated special access transport to extend the trunk group from the interconnection point to the designated tandem.

37.3 Interconnection using Collocation:

If the Parties Interconnect their networks using Collocation in GTE's Wire Centers, the following requirements apply:

37.3.1 AT&T will deploy a local service network that places switching and transmission equipment throughout the LATA. The placement of this equipment uses a combination of AT&T owned Wire Centers and collocated space in GTE Wire Centers.

37.3.2 AT&T will request interconnection with GTE at specific points in GTE's network. The following options are available for (i) the termination of traffic to the GTE network, (ii) the termination of traffic to the AT&T network and (iii) the transiting of traffic to/from a third party network.

37.4 Local Traffic and IntraLATA Toll Traffic - Originating on AT&T, Terminating on GTE.

AT&T may build trunk groups to GTE using the following representative, but not exclusive, options: (i) from AT&T collocated equipment in a Wire Center to the GTE Tandem; (ii) from AT&T collocated equipment in a GTE Wire Center to the GTE End Office Switch; or (iii) from AT&T 4ESS Switches located at AT&T POPs to the nearest GTE Tandem.

Interfaces for these interconnections may be based upon, but not limited to, the following: (i) DS1: from an AT&T-collocated DDM-2000 to a GTE Central Office Switch; (ii) SONET STS1: from an AT&T-collocated DDM-2000 to an GTE 5ESS[®]-2000 Central Office Switch and (iii) DS1/DS3: from an AT&T 4ESS Switch at an AT&T POP to a GTE Tandem using new trunk groups on existing facilities.

37.4.1 Upon request by either Party, the other Party shall provide, for the purpose of network planning and management, performance data regarding traffic characteristics with respect to the first Party's trunks and interconnections to and with the other Party. The specific quantity, timing and detail of such performance data shall be mutually agreed upon by the teams implementing this Agreement.

37.5 Transit Service Traffic

37.5.1 GTE agrees that it shall provide Transit Service to AT&T on terms and conditions set forth in this Agreement.

37.5.2 "Transit Service" means the delivery of certain traffic between AT&T and a third party LEC or ILEC by GTE over the Local/IntraLATA Trunks. The following types of traffic will be delivered: (i) Local Traffic and IntraLATA Toll Traffic originated from AT&T to such third party LEC or ILEC and (ii) Local Traffic and IntraLATA Toll Traffic originated from such third party LEC or ILEC and terminated to AT&T

where GTE carries such traffic pursuant to the Commission's primary toll carrier plan or other similar plan.

37.5.3 While the Parties agree that it is the responsibility of each third party LEC or ILEC to enter into arrangements to deliver Local Traffic between them, they acknowledge that such arrangements are not currently in place and an interim arrangement is necessary to ensure traffic completion. Accordingly, until the earlier of (i) the date on which either Party has entered into an arrangement with such third party LEC or ILEC to deliver Local Traffic via direct trunks or (ii) the termination of this Agreement, GTE will transit such traffic.

37.5.4 All networks involved in transit traffic will deliver each call to each involved network with CCIS to the extent available from third party LECs and the appropriate Transaction Capabilities Application Part (TCAP) messages to facilitate full interoperability and billing functions. In all cases, each Party is responsible to follow Exchange Message Record ("EMR") standard and exchange records with both the other Party and the terminating LEC or ILEC to facilitate the billing process to the originating network.

37.5.5 Transiting traffic will be delivered using the physical connection options as described in Section 37.4.

37.6 Selection of LATAs

37.6.1 If AT&T determines to offer Telephone Exchange Services in any LATA, AT&T shall provide written notice to GTE of its need to establish Interconnection in such LATA pursuant to this Agreement. This notice shall include (i) the Wire Centers that AT&T has designated in the LATA, and (ii) a non-binding forecast of AT&T's trunking requirements indicating the proposed Interconnection Activation Date. AT&T shall issue an ASR to GTE in accordance with Section 37.6.3 to order the Interconnection facilities and trunks.

37.6.2 Unless otherwise agreed by the Parties, the Parties shall designate the Wire Center AT&T has identified as its initial Routing Point in the LATA as the ATIWC in that LATA and shall designate the GTE Tandem Office within the LATA nearest to the ATIWC (as measured in airline miles utilizing the V&H coordinates method) as the AIWC in that LATA.

37.6.3 Unless otherwise agreed by the Parties, the Interconnection Activation Date in each LATA in which no construction is required shall be twenty-five (25) business days after the date on which AT&T delivered notice via an ASR to GTE pursuant to this Section. Where

construction is required, the Interconnection Activation Date shall be as mutually agreed by the Parties.

- 37.6.4 GTE and AT&T will conduct joint planning sessions to determine the following representative, but not exclusive, information: (i) forecasted number of trunk groups; and (ii) the interconnection activation date.

37.7 Additional Switches or Interconnection Points

If AT&T deploys additional switches in a LATA after the date hereof or otherwise wishes to establish Interconnection with additional GTE Wire Centers, AT&T may, upon written notice thereof to GTE, establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection. If GTE deploys additional switches in a LATA after the date hereof or otherwise wishes to establish Interconnection with additional AT&T Wire Centers, GTE may, upon written notice thereof to AT&T, establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection. If either Party establishes an additional Tandem Switch in a given LATA, the Parties shall jointly determine the requirements regarding the establishment and maintenance of separate trunk group connections and the sub-tending arrangements relating to Tandem Switches and End Offices which serve the other Party's customers within the Exchange Areas served by such Tandem Switches.

37.8 Nondiscriminatory Interconnection

Interconnection provided by GTE shall be equal in quality to that provided by GTE to itself or any subsidiary, Affiliate or other person. "Equal in quality" means the same or equivalent technical criteria and service standards that a Party uses within its own network and, at a minimum, requires GTE to design interconnection facilities to meet the same technical criteria and service standards that are used within GTE's network.

37.9 Technical Specifications

- 37.9.1 The Parties agree to establish trunk groups of sufficient capacity such that trunking is available as a direct transmission path between each AT&T and GTE interconnected Central Office. The Parties will mutually agree as to where one-way or two-way trunking will be applicable. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision one-way trunks for delivery of Local Traffic to the other Party provided that where a

Party elects to provision one or more one-way trunks, the other Party shall be entitled to do the same. Each Party shall be responsible for the expenses associated with its own portion of the trunking. AT&T and GTE shall work cooperatively to install and maintain a reliable network. AT&T and GTE shall exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree) to achieve this desired reliability.

- 37.9.2 AT&T and GTE shall work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

37.10 911/E911 Arrangements

37.10.1 Description of Service

AT&T shall have the right to utilize the existing GTE 911/E911 infrastructure (as agreed in Sections 37.10.3 and 37.10.5 below) to provide all 911/E911 capabilities to its end users. AT&T will install a minimum of two dedicated trunks to GTE's 911/E911 selective routers (i.e., 911 tandem offices) that serve the areas in which AT&T provides Exchange Services, for the provision of 911/E911 services and for access to all subtending PSAPs. The dedicated trunks shall be, at minimum, DSO level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) tones that will deliver ANI with the voice portion of the call. At the request of AT&T, GTE will provide AT&T with the appropriate CLLI codes and specifications of the tandem office serving area. If an AT&T Central Office serves end users in an area served by more than one GTE 911/E911 selective router, AT&T will install a minimum of two dedicated trunks in accordance with this section to each of such 911/E911 selective routers.

37.10.2 Transport

If AT&T desires to obtain transport from its end office to the GTE 911 selective routers, AT&T may purchase such transport from GTE at the rates set forth in GTE's intrastate switched access tariff or in GTE's intrastate special access tariff.

37.10.3 Cooperation and Level of Performance

- 37.10.3.1 The Parties agree to provide access to 911/E911 in a manner that is transparent to the end user. The Parties will work together to facilitate the prompt, reliable and efficient interconnection of AT&T's systems to the 911/E911 platforms to ensure that 911/E911 service is fully available to AT&T's end users, with a level of performance that will provide the same grade of service as that which GTE provides to its own end users and that meets State requirements, provided, however that GTE shall not be contractually liable to AT&T in the event that the grade of service offered by GTE does not meet State requirements. To this end, GTE will provide documentation to AT&T showing the correlation of its rate centers to its E911 tandems.
- 37.10.3.2 In the event of an GTE or AT&T 911 trunk group failure, the Party that owns the trunk group will notify, on a priority basis, the other Party of such failure, which notification shall occur within two (2) hours of the occurrence or sooner if required under Applicable Law. The Parties will exchange a list containing the names and telephone numbers of the support center personnel responsible for maintaining the 911 Service between the Parties.
- 37.10.3.3 When AT&T purchases transport, GTE will provide AT&T with the order number and the circuit identification code in advance of the service due date.
- 37.10.3.4 AT&T or its third party agent will provide CNA data to GTE for use in entering the data into the 911 data base. The initial CNA data will be provided to GTE in a format prescribed by NENA (National Emergency Number Association). AT&T is responsible for providing GTE updates to the CNA data and error corrections which may occur during the entry of CNA data to the GTE 911 Database System. GTE will confirm receipt of such data and corrections by close of business on the next Business Day by providing AT&T with a report of the number of items sent, the number of items entered correctly, and the number of errors.
- 37.10.3.5 AT&T will monitor the 911 circuits for the purpose of determining originating network traffic volumes. AT&T will notify GTE if the traffic study information indicates that additional circuits are required to meet the current level of 911 call volumes.
- 37.10.3.6 [Intentionally deleted.]
- 37.10.3.7 Inter-office trunks provided for 911 shall be engineered to assure minimum P.01 transmission grade of service as measured during the

busy day/busy hour. A minimum of two trunks shall be provided by AT&T.

37.10.4 Updates to MSAG

It shall be the responsibility of AT&T to ensure that the address of each of its end users is included in the Master Street Address Guide ("MSAG") via information provided on AT&T's Local Service Request ("LSR") or via a separate feed established by AT&T and GTE pursuant to Section 37.10.5 of this Agreement. Any MSAG change that appears to be required by AT&T must be approved by the County. Within thirty (30) days after the Effective Date of this Agreement, GTE shall provide AT&T with an initial electronic copy and a paper copy of the MSAG or its equivalent. Prior to the time that updates are available electronically, GTE will provide updates to AT&T on a monthly basis. Thereafter, GTE will provide updates to AT&T as changes are made.

37.10.5 Updates to Database

GTE and AT&T will work together to develop the process by which the 911/E911 database will be updated with AT&T's end user 911/E911 information. AT&T shall have the right to verify the accuracy of the information regarding AT&T's end users in the 911/E911 database.

37.10.6 Compensation

In situations in which GTE is responsible for maintenance of the 911/E911 database and can be compensated for maintaining AT&T's information by the municipality, GTE will seek such compensation from the municipality. GTE will seek compensation from AT&T only if and to the extent that GTE is unable to obtain such compensation from the municipality.

38. Transmission and routing of telephone exchange service traffic pursuant to section 251(c)(2)

38.1 Scope of Traffic

This Section prescribes parameters for trunk groups (the "Local/IntraLATA Trunks") to be effected over the Interconnections specified in Part IV for the transmission and routing of Local Traffic and IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service Customers.

38.2 Limitations

No Party shall terminate Exchange Access traffic or originate untranslated 800/888 traffic over Local/IntraLATA Interconnection Trunks.

38.3 Trunk Group Architecture and Traffic Routing

The Parties shall jointly engineer and configure Local/IntraLATA Trunks over the physical Interconnection arrangements as follows:

- 38.3.1 Notwithstanding anything to the contrary contained in this Section, if the traffic volumes between any two Central Office Switches at any time exceeds the CCS busy hour equivalent of one DS1, the Parties shall within sixty (60) days after such occurrence establish new direct trunk groups to the applicable End Office(s) consistent with the grades of service and quality parameters set forth in the Grooming Plan.
- 38.3.2 Only those valid NXX codes served by an End Office may be accessed through a direct connection to that End Office.
- 38.3.3 Each Party shall ensure that each Tandem connection permits the completion of traffic to all End Offices which sub-tend that Tandem or to End Offices which sub-tend an additional Tandem, provided, that AT&T enters into an appropriate billing arrangement pursuant to Section 38.3.4. Alternatively, each Party shall establish and maintain separate trunk groups connected to each Tandem of the other Party which serves, or is sub-tended by End Offices which serve, such other Party's customers within the Exchange Areas served by such Tandem Switches.
- 38.3.4 GTE will provide tandem to tandem switching to AT&T. AT&T shall enter into an appropriate billing arrangement with GTE to ensure recovery of inter-tandem switching costs at rates established by the Commission.

38.4 Signaling

SS7 Signaling may be used for signaling for IntraLATA and local calls between AT&T switches, between AT&T switches and GTE switches, and between AT&T switches and those third party networks with which GTE's SS7 network is interconnected.

- 38.4.1 Where available, CCIS signaling shall be used by the Parties to set up calls between the Parties' local networks. Each Party shall supply

Calling Party Number (CPN) within the SS7 signaling message, if available. If Common Channel Interoffice Signaling ("CCIS") is unavailable, MF (Multi-Frequency) signaling shall be used by the Parties.

38.4.2 Each Party is responsible for requesting Interconnection to the other Party's CCIS network, where SS7 signaling on the trunk group(s) is desired. Each Party shall connect, either directly or via arrangements with third party providers, to a pair of access STPs where traffic will be exchanged. The Parties shall establish interconnection at the STP.

38.4.3 The Parties will cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate interoperability of CCIS based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its Customers. Each Party shall honor all privacy indicators as required under Applicable Law.

38.4.4 Where available and upon the request of the other Party, each Party shall cooperate to ensure that its trunk groups are configured utilizing the B8ZS ESF protocol for 64 kbps clear channel transmission to allow for ISDN interoperability between the Parties' respective networks.

38.5 **Grades of Service**

The Parties shall initially engineer and shall jointly monitor and enhance all trunk groups consistent with the Grooming Plan.

38.6 **Measurement and Billing**

38.6.1 Each Party shall pass Calling Party Number (CPN) information on each call that it originates and terminates over the Local/IntraLATA Trunks. Until GTE installs the capability to use actual CPN information, all calls exchanged shall be billed either as Local Traffic or IntraLATA Toll Traffic based upon a percentage of local usage (PLU) factor calculated based on the amount of actual volume (or best estimate) during the preceding three months. The PLU will be reevaluated every three (3) months.

38.6.2 Measurement of Telecommunications traffic billed hereunder shall be (i) in actual conversation time as specified in FCC terminating FGD Switched access tariffs for Local Traffic and (ii) in accordance with applicable tariffs for all other types of Telecommunications traffic.

38.7 Reciprocal Compensation Arrangements

Reciprocal Compensation for the exchange of traffic shall be paid as described in Part V and Attachment 15, at the prices specified in Attachment 14.

38.8 Transiting Traffic

38.8.1 The exchange of transiting traffic is defined in Section 37.5.2.

38.8.2 Compensation for transiting traffic shall be paid as described in Part V and Attachment 15, at the prices specified in Attachment 14.

39. Transmission and Routing of Exchange Access Traffic**39.1 Scope of Traffic**

This Section prescribes parameters for certain trunk groups ("Access Toll Connecting Trunks") to be established over the Interconnections specified in this Agreement for the transmission and routing of Exchange Access traffic and nontranslated 800 traffic between AT&T Telephone Exchange Service Customers and Interexchange Carriers.

39.2 Trunk Group Architecture and Traffic Routing

39.2.1 The Parties shall jointly establish Access Toll Connecting Trunks by which they will jointly provide Tandem transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic from and to AT&T's customers.

39.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access and nontranslated 800/888 traffic to allow AT&T's customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a GTE access Tandem.

39.2.3 The Access Toll Connecting Trunks shall be two way trunks connecting an End Office Switch that AT&T utilizes to provide Telephone Exchange Service and Switched Exchange Access Service in a given LATA to an access Tandem Switch GTE utilizes to provide Exchange Access in such LATA.

39.2.4 The Parties shall jointly determine which GTE access Tandem(s) will be sub-tended by each AT&T End Office Switch.

- 39.2.5 Only those valid NXX codes served by an End Office may be accessed through a direct connection to that End Office.

40. Transport and Termination of Information Services Traffic

- 40.1 Each Party shall route Information Service Traffic which originates on its own network to the appropriate information services platform(s) connected to the other Party's network over the Local/IntraLATA Trunks.
- 40.2 The Party ("Originating Party") on whose network the Information Services Traffic originated shall provide an electronic file transfer or monthly magnetic tape containing recorded call detail information to the Party ("Terminating Party") to whose information platform the Information Services Traffic terminated.
- 40.3 The Terminating Party shall provide to the Originating Party via electronic file transfer or magnetic tape all necessary information to rate the Information Services Traffic to the Originating Party's customers and establish uncollectible reserves pursuant to the Terminating Party's agreements with each information provider.
- 40.4 The Originating Party shall bill and collect such information provider charges and remit the amounts collected to the Terminating Party less:
- 40.4.1 The Information Services Billing and Collection fee set forth in Attachment 14; and
- 40.4.2 An uncollectibles reserve calculated based on the uncollectibles reserve in the Terminating Party's billing and collection agreement with the applicable information provider; and
- 40.4.3 Customer adjustments provided by the Originating Party.
- 40.5 The Originating Party shall provide to the Terminating Party sufficient information regarding uncollectibles and customer adjustments. The Terminating Party shall pass through the adjustments to the information provider. Final resolution regarding all disputed adjustments shall be solely between the Originating Party and the information provider.
- 40.6 Nothing in this Agreement shall restrict either Party from offering to its Telephone Exchange Service Customers the ability to block the completion of Information Service Traffic.

41. Installation, Maintenance, Testing and Repair**41.1 Grooming Plan**

Within ninety (90) days after the Effective Date, AT&T and GTE shall jointly begin the development of a plan (the "Grooming Plan") which shall define and detail, inter alia, (i) standards to ensure that Interconnection trunk groups experience a grade of service, availability and quality in accord with all appropriate relevant industry-accepted quality, reliability and availability standards and in accordance with the levels GTE provides to itself, or any subsidiary, Affiliate or other person; (ii) the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the Interconnections (including signaling) specified in Part IV and the trunk groups specified in Part IV, including standards and procedures for notification and discoveries of trunk disconnects; (iii) disaster recovery and escalation provisions; and (iv) such other matters as the Parties may agree.

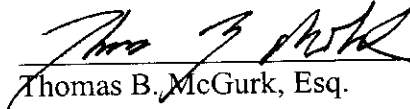
41.2 Operation and Maintenance

Each Party shall be solely responsible for the installation, operation and maintenance of equipment and facilities provided by it for Interconnection, subject to compatibility and cooperative testing and monitoring and the specific operation and maintenance provisions for equipment and facilities used to provide Interconnection. Operation and maintenance of equipment in Virtual Collocation shall be in accordance with the provisions of Attachment 3. Each party shall also be responsible for engineering and maintaining its network on its side of the interconnection point. If and when the Parties choose to interconnect at a mid-span meet, the Parties will jointly provision the fiber optic facilities that connect the two networks and shall share the financial and other responsibilities for those facilities.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Brief of AT&T Broadband Phone of Kentucky, LLC was served upon the following party by placing a copy of the same in the United States Mail, first-class postage prepaid.

This the 12th day of December, 2003.


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